IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PPG INDUSTRIES OHIO, INC. and PPG INDUSTRIES, INC., Plaintiffs, v. AXALTA COATING SYSTEMS, LLC. Defendant.	Civil Action No.: 21-cv-00346-LPS-SRF **FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs PPG Industries Ohio, Inc. and PPG Industries, Inc. (collectively, "Plaintiffs" or "PPG"), by and through their attorneys, file this First Amended Complaint of patent infringement of U.S. Patent No. 7,981,505 (the "'505 Patent") against Defendant Axalta Coating Systems, LLC ("Defendant" or "Axalta"). Defendant directly and/or indirectly infringes the '505 Patent in violation of the patent laws of the United States of America, 35 U.S.C. § 101, *et seq.,* and PPG alleges as follows:

INTRODUCTION

1. This is an action for patent infringement relating to PPG's innovative multi-layer coating system that achieves special effect colors, *e.g.*, unique reflectivity and bright, vibrant color, for vehicles, such as automobiles. The claimed multi-layer coating system results in improved color depth and saturation, with durability not achievable by other multi-layer coating systems.

PPG

2. PPG is an award-winning global leader for automotive coatings. It supplies coatings, sealants and paint products, among other things, to customers throughout the world. For nearly 100 years, PPG has offered the highest quality products for vehicle paint, which is used by car manufacturers and refinishers worldwide. Since 1924, PPG's automotive coatings have been at

the forefront of innovation, combining expertise in coatings and special effects technologies with analyses of industry trends to aid automakers around the world in enhancing the image and identity of their vehicle brands.

3. PPG was the first manufacturer to introduce breakthrough automotive coating technologies including, by way of example, cathodic electrocoat (or "e-coat") such as PPG ENVIRO-PRIME® coatings, refinish waterborne basecoats such as AQUABASE® coatings and ENVIROBASE® High Performance System, powder clearcoats such as PPG ENVIRACRYL® coatings, and scratch resistant coatings such as PPG CERMICLEAR® coatings.

4. In 2013, PPG was awarded the Automotive News PACE Award for its innovative ANDARO® nanotechnology tint dispersion. *See* Exh. 1, a true and correct copy of https://www.compositesworld.com/articles/ppg-wins-pace-award-for-andaro-tint-dispersions. For nearly thirty years, the PACE Award has honored "superior innovation, technological advancement and business performance among automotive suppliers," which includes both PPG and Axalta. *See* Exh. 2, a true and correct copy of Automotive News Pace Program, https://www.autonews.com/awards/pace-program "Judged by an independent panel of judges, PACE is recognized around the world as the industry benchmark for innovation." *Id.* The PACE Award "is recognized in the global automotive industry for identifying and celebrating the latest game-changing innovation from the plant floor to the product to the showroom floor." *Id.*

5. PPG's PACE award-winning ANDARO® nanotechnology plays an important role in the automotive industry, as well as in the aerospace industry. It has had "significant market impact" and was a "'game changer[]' in the automotive industry" "for enabl[ing] automotive manufacturers to achieve more vibrant colors, especially in the flop (horizontal) angle." *See* Exh. 1; *see also* Exh.

3, a true and correct copy of https://www.compositesworld.com/articles/ppg-wins-pace-award-for-andaro-tint-dispersions.

6. PPG's ANDARO® tint dispersions are a key component of the multi-layer coating system protected by the '505 Patent. ANDARO® tint dispersions are known to bring unique colors to the automobile market due to their high-chroma and rich, vibrant look. *See*, e.g., Exh. 4, a true and correct copy of https://www.coatingsworld.com/contents/view_breaking-news/2017-05-22/ppg-waterborne-coatings-with-andaro-pigment-bring-brilliance-to-new-byd-models-at-auto-shanghai-2017/ (discussing brilliant and distinctive colors for concept cars and new models using ANDARO® nanotechnology).

AXALTA

7. At about the same time PPG launched its innovative ANDARO® nanotechnology, a private equity company known as The Carlyle Group ("Carlyle") agreed to purchase the performance coatings business from chemical giant, E.I. DuPont De Nemours & Co. ("E.I. DuPont") for $4.9 billion. *See* Exh. *5,* a true and correct copy of E.I DuPont's Form 10-K (2012) at 4/134, 28/134.

8. At the time of this purchase, DuPont Performance Coatings ("DPC") was a leading motor vehicle coatings supplier. Like PPG, DPC offered high performance coatings for motor vehicle original equipment manufacturers ("OEMs") and the automotive refinish business. *See* Exh. 6, a true and correct copy of Launching Axalta: An Interview with Charlie Shaver, at 1-2.

9. In connection with its acquisition of DPC, Carlyle formed new companies using the Axalta name: Axalta Coating Systems Ltd. ("Axalta Ltd.")—a holding company with no operations of its own—and various operating subsidiaries, "for the purpose of consummating the acquisition [of DuPont Performance Coatings ("DPC")]." *See* Exh. 47, a true and correct copy of Axalta Coating

Systems Ltd. Form 10-K (2017), at 3. Axalta Coating Systems LLC was one of the operating subsidiaries Carlyle formed to effect the acquisition of DPC. Defendant, Axalta Coating Systems LLC, was incorporated in Delaware on May 24, 2012. *See* Exh. 8 a true and correct copy of a Corporate Search Axalta Coating Systems LLC, at 1.

10. Axalta also formed two holding companies for its intellectual property: Axalta Coating Systems IP Co. LLC, incorporated in Delaware on Dec. 12, 2012 and Coatings Foreign IP Co. LLC, incorporated in Delaware on Jan. 10, 2013, (collectively "Axalta IP Companies"). *See* Exh. 9, at 2. The Axalta IP Companies are subsidiaries of Defendant, and both Axalta IP Companies are "shell" companies (*id.)* and, upon information and belief, without active business operations, thus, leaving all intellectual property decision-making to Defendant.

11. Upon information and belief, Carlyle set up Axalta Ltd. as a holding company, while company decisions and operations are conducted by Defendant, either in its own name or through its subsidiaries. For example, upon information and belief, Defendant's subsidiary Axalta Coating Systems IP Co. LLC, the assignee of Axalta's U.S. patents and trademarks, is believed to be controlled by Defendant. Likewise, upon information and belief, Coatings Foreign IP Co. LLC, the assignee of Axalta's European patents and applications, is also controlled by Defendant. *See* Exh. 10, a true and correct copy of a U.S. Patent Application 2015/0119514 assigned to Axalta Coating Systems IP Co. LLC, and s*ee* Exh. 11, a true and correct copy of European Patent EP 2862957 B1 assigned to Coating Foreign IP Co. LLC. *See also* Exh. 12, which a true and correct copy of a trademark record from the United States Patent & Trademark Office for the trademark registration for "Cromax" showing that it is owned by Axalta Coating Systems IP Co. LLC.

12. Upon information and belief, Defendant is also the parent of Axalta Coating Systems Germany GmbH. *See* Exh. 9 at 1. Axalta Coating Systems Germany GmbH was formed on April

22, 2013. *See* Exh. 13, a true and correct copy of a machine translation of Axalta Coating Systems Germany GmbH record (Lexis Nexis); Upon information and belief, Axalta Coating Systems Germany GmbH was formerly DuPont Performance Coatings GmbH. *See* Exh. 14 a true and correct copy of an Axalta Account Pledge Agreement, at 1.

13. Upon information and belief, Defendant makes intellectual property decisions on behalf of or carried out through Axalta Coating Systems Germany GmbH, as well as its other subsidiaries, e.g., shell companies Axalta Coating Systems IP Co. LLC and Coatings Foreign IP Co. LLC.

14. Upon information and belief, after Axalta acquired DPC on February 1, 2013, it instantly had "a foundation of more than 90 years in the coatings industry . . . serv[ing] more than 120,000 customers in 130 countries and provid[ing] customers with a full range of coating systems." *See* Exh. 7, at 2. Consequently, Axalta stepped into the shoes of DPC and became one of PPG's primary competitors in performance coatings.

15. Upon information and belief, the acquisition of DPC caused Axalta to become a direct competitor to PPG in the industry. *See* Exh. 16, a true and correct copy of excerpts from Axalta Ltd. Form S-1 Registration Statement (Aug. 20, 2014) at 115.

16. After the acquisition of DPC on February 1, 2013, Axalta "continue[d] to do business as DuPont Performance Coatings for the next several months." *See* Exh. 7 at 3. This is confirmed by Defendant Axalta's General Counsel maintaining a DuPont email address at least as late as December 27, 2013. (*See* Exh. 50, at 658-659).

5. Notices. For purposes of Section 12.1 of the Indenture, the address for notices to the New Guarantor shall be:

Axalta Coating Systems, LLC
Two Commerce Square
2001 Market Street, Suite 3600
Philadelphia, PA 19103
Attn: Michael Finn, General Counsel
Telephone: (302) 992-2260
Telefax: (302) 892-5615
Email: michael.finn@usa.dupont.com

With a copy to:

The Carlyle Group
1001 Pennsylvania Avenue Northwest
Washington, DC 20004
Attention: Martin Sumner; Wesley Bieligk
Telephone: (202) 729-5829
Telefax: (202) 347-1818

17. On March 20, 2013, less than two months after the acquisition of DPC by Axalta, and while Axalta was still operating as DPC and using DuPont email addresses, Defendant filed an Opposition to PPG's European Patent No. 1776195 ("EP '195 Patent"), which claims a multi-layer coating system incorporating nanotechnology. This was about the time that PPG's ANDARO® nanotechnology tint dispersion was getting high praise in the market, and shortly before the Automotive News awarded PPG the Pace Award in 2013. *See* e.g., Exh. 1-4.

18. Axalta holds itself out as a global coatings company, led by a united global leadership team. *See, e.g.*, Exh. 17, a true and correct copy of a webpage from Axalta's website, at 1 https://www.axalta.com/corporate/en_US/about-axalta.html; *see also*, Exh. 18, a true and correct copy of a webpage from Axalta's website, https://www.axalta.com/corporate/en_US/about-axalta/leadership.html, stating "we succeed as a united global team." Furthermore, Axalta's global leadership team includes a general counsel responsible globally for intellectual property. *See* Exh. 19, a true and correct copy of Axalta's webpage bio of Brian Berube, https://www.axalta.com/corporate/en_US/about-axalta/leadership/management/brian-berube.html.

19. Upon information and belief, a sophisticated global company such as Axalta would have known about PPG's '505 Patent, when it opposed its counterpart EP '195 Patent, especially since the United States patent application that issued as the '505 Patent was identified on the cover of the EP '195 Patent at the time of the Opposition, and was part of the prosecution file history of the EP '195 Patent. *See* Exh. 20, a true and correct copy of the EP '195 Patent. Upon information and belief, Axalta would have also known about PPG's win of the PACE Award, since it competes against Axalta (and other automotive suppliers) for the PACE Award on a yearly basis, and tracks the winners of this award. *See e.g.*, Exh. 21, a true and correct copy of a webpage from Axalta's website Axalta Names Winners of 2020 Supplier Performance Award (https://www.pcimag.com/articles/108774-axalta-names-winners-of-2020-supplier-performance-award). Axalta is aware of the PACE award, not only because of the award's notoriety in the industry, but because Axalta was selected as a finalist for the award in 2015. *See* Exh. 22, a true and correct copy of Axalta's webpage https://www.businesswire.com/news/home/20150121006513/en/Axalta-Coating-Systems%E2%80%99-2-Wet-Monocoat-Paint-System-Selected-as-a-2015-Automotive-News-PACE-Award-Finalist .

THE PARTIES

20. Plaintiff PPG Industries Ohio, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 3800 West 143rd Street, Cleveland, Ohio 44111. PPG Industries Ohio, Inc. is a wholly owned subsidiary of PPG Industries, Inc.

21. Plaintiff PPG Industries, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at One PPG Place, Pittsburgh, Pennsylvania 15272.

22. Upon information and belief, Defendant Axalta Coatings Systems LLC is a limited liability company organized and existing under the laws of the State of Delaware, and a parent company to Axalta Coating Systems Germany GmbH, Axalta Coating Systems IP Co. LLC, and Coatings Foreign IP Co. LLC. Axalta LLC has a principal place of business at 50 Applied Bank Boulevard, Suite 300, Glenn Mills, Pennsylvania 19342. *See* Exh. 23 at 1. Upon information and belief, when formed in 2012 and for at least part of 2013, Axalta LLC was doing business as DuPont Performance Coatings. *See* Exh. 7 at 3.

JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction over PPG's claims for patent infringement pursuant to the Federal Patent Act, 35 U.S.C. § 101 *et seq*. and 28 U.S.C. §§ 1331 and 1338(a).

24. This Court has personal jurisdiction over Axalta because, among other reasons, Axalta (i) is a limited liability company organized under the laws of this District, and upon information and belief, (ii) has done and continues to do business in Delaware, including regularly doing or soliciting business; and (iii) has committed and continues to commit acts of patent infringement in the State of Delaware, including inducement of Axalta Customers of its products to commit acts of patent infringement in Delaware.

25. As set forth above, Axalta resides in this judicial district and for at least the same reasons set forth in paragraph 24, venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 (b), (c) and 1400(b).

THE TECHNOLOGY AND PATENT-IN-SUIT

26. Automobiles typically are coated with multiple layers of paint/coatings to achieve a desired aesthetic look and protection. Various automobile manufacturers, or OEMs, offer a plethora of colors when a consumer purchases a new vehicle. "With OEMs using exterior colors as a key differentiator for their offerings, many highly chromatic, vibrant colors are being introduced that provide a candy-like appearance." *See* Exh. 24, a true and correct copy of Coatings World, The Auto Refinish Market (October 2014) at 46. After a collision, those automobiles having the highly chromatic, vibrant colors, must be repaired by refinishers who can match the original candy-like appearance. To either create or match these translucent colors for refinish work, PPG's ANDARO® tint dispersion is incorporated into a multi-layered coating system. *Id.*

27. PPG's patented multi-layer coating system results in deep chromatic colors and layered depth to achieve premium, durable special color effects. The nanopigments and high transparency features are incorporated into a non-hiding midcoat layer that offers higher color saturation to durable premium paints for automobiles.

28. On July 19, 2011, the United States Patent and Trademark Office duly and lawfully issued the '505 Patent entitled "COATED ARTICLES AND MULTI-LAYER COATINGS" based upon an application serial no. 10/876,291 filed June 24, 2004 by inventors Robert E. Jennings, James A. Claar, Eldon L. Decker, and Noel R. Vanier. The '505 Patent is subject to a 35 U.S.C. § 154(b) term extension of 807 days. A true and correct copy of the '505 Patent is attached hereto as Exh. 25 and incorporated by reference.

29. PPG Industries Ohio, Inc. is the owner, by valid assignment, of the entire right, title and interest in and to the '505 Patent. PPG Industries Ohio, Inc. has granted a license under the '505 Patent to PPG Industries, Inc.

30. The ’505 Patent discloses a novel multi-layer coating system that includes a color-imparting non-hiding coating layer deposited from a protective coating composition comprising nano-sized color-imparting particles and having low haze (high transparency) and a film forming resin. Claim 1 of the ’505 Patent is reproduced here for convenience.

> 1. A multi-layer coating system comprising:
>
> a) a metallic basecoat layer deposited from a film-forming composition comprising a resinous binder and a metallic pigment;
>
> b) a color-imparting non-hiding coating layer deposited over at least a portion of the basecoat layer, wherein the color-imparting non-hiding layer is deposited from a protective coating composition comprising (i) color-imparting organic pigments of one or more colors having an average primary particle size of less than 150 nanometers and having a maximum haze of about 10%; and (ii) a film-forming resin; and
>
> c) a clearcoat layer deposited over at least a portion of the color-imparting non-hiding layer, wherein the clearcoat layer is deposited from a film-forming composition comprising a resinous binder,
>
> wherein one or more of the layers a), b) and c) is capable of ambient cure.

31. PPG makes and sells individually packaged and separately sold components for use in multi-component coating systems in accordance with the ’505 Patent. Because each component is individually packaged and separately sold, PPG has no patented article capable of being marked with the ’505 Patent. As such, PPG has complied with 35 U.S.C. § 287(a).

THE ACCUSED SYSTEM

32. Plaintiffs reference and incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

33. Defendant Axalta manufactures, markets, uses, sells, offers for sale and/or imports in the United States coating systems that include basecoats, mid-coats, and topcoats, as recited in the claims of the ’505 Patent, under the brands Cromax®, Spies Hecker® and Standox® (“Accused

System"). These coatings are used primarily in the automotive industry by Axalta and its customers, who include Axalta's distributors, automotive refinishers (*i.e.*, paint and body shops), and/or automotive OEMs ("Axalta Customers").

34. The Accused System includes individual products that constitute a basecoat, midcoat and/or clearcoat as recited in the claims of the '505 Patent. For example, under the Cromax® brand individual basecoat products include: Cromax® Pro, ChromaPremier®, ChromaBase®, and Centari® basecoats. Individual midcoats include: Chromasystem 10002S, ChromaSystem 10003S and ChromaSystem 11000S, and Vermeera™ color technology. Cromax® clearcoat includes Cromax Prmier LE 8300S clearcoat. Cromax also includes tinted clearcoats, and additives to tint the clearcoats, that are used with Cromax and Centari basecoats as recited in the claims of the '505 Patent. Likewise, under Axalta's Standox brand individual products include: Standox® basecoats, Standoxryl® Specialty Midcoats, and Standocryl® clear coats. And, under Axalta's Spies Hecker® brand individual products include Permacron® or Permahyde® base coats, Permasolid® mid-coats, and Permasolid® clear coat.

35. The ability to create and match automotive colors using pigment dispersions is technically complex but important to the performance coating segment of Axalta's business. In its 2020 Annual Report filed with the SEC (Exh. 26 at 5) Axalta states:

> Our color technology is manifested in the pigment and dispersion technology that are utilized in our tints, one of the most technologically advanced parts of the refinish coatings system, which makes up most of our products in a body shop. We have a large color library and several well-known, long-standing premium brands, including Cromax, Standox, Spies Hecker, and our newest mainstream product, Syrox™, as well as other regional and local brands.

36. Upon information and belief, Axalta's "pigment and dispersion technology" that manifests its "color technology" employs a nanopigment to achieve special color effects desired by today's consumers. Axalta's own statements acknowledge this:

> Consumer preference today is more than simply the color on the vehicle: it is also about "movement" for added flair and appearance. By using technology and adding colored pigments and flakes, today's vehicles shimmer and sparkle with different effects that make the color change from different viewing points. *See* Exh. 48 a true and correct copy of Innovations in Automotive Coatings from Axalta's website at https://newsroom.axalta.com/innovations-in-automotive-coatings
>
> Each color is carefully formulated for beauty, durability and functionality.…When made to fit perfectly, color has the ability to showcase the architecture and image of the vehicle, while also allowing the driver to show off their personality and make a statement…. *Id*.
>
> Combination colors are also trending in the automotive market as consumers demand more customization and uniqueness in vehicle colors. Fine metallic-flake effects are becoming more popular in silver and dark grays, and the use of high-sparkle effects in rich colors such as reds, greens and coppers are also on the rise. *Id.*

37. Axalta also states that: "Axalta's color technology adds rich chroma to basecoats by formulating colors with premium dispersant technologies, nano pigment dispersions and multi-layered coating (*see* Exh. 27 at 9) and that it uses grinding and milling techniques to achieve particles of pigments into "the smallest particle size possible." *See* Exh. 28, a true and correct copy of Crosby, Tom, *Warren County boasts one of the world's largest paint makers,* Winchester Star, (Apr. 4, 2019); *see also* Exh. 29, a true and correct copy of, *Axalta Leads Discussion on Improved Performance Through Enhanced Coatings at European Automotive Coatings Conference*, (Sept. 25, 2015), at 3 (Axalta explaining that "[m]ore transparent pigments are produced though [sic] high-energy milling and advanced dispersion processes"; *see also*, Exh. 30, a true and correct copy of Automotive Color Trends: Globalization, Customization, Saturation, American Coatings Assn., at 3 ("Axalta's Vermeera™ high chroma color technology, for instance, uses high energy grind dispersion technology and dispersant technology to produce more chromatic colors….").

38. Upon information and belief, Axalta's milling techniques and use of "more transparent pigments" meet the particle size and haze features of at least claim 1 of the '505 Patent.

39. Axalta combines and uses these individual products, including midcoats incorporating PPG's nanotechnology, and also actively directs, instructs, and encourages Axalta Customers to combine and use these individual products to form a multi-layered system that infringes the '505 Patent ("Accused System").

INFRINGEMENT OF THE '505 PATENT

Direct Infringement

40. Plaintiffs reference and incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

41. Defendant has directly infringed at least claim 1 of the '505 Patent pursuant to 35 U.S.C. § 271 (a), either literally or under the doctrine of equivalents, by at least making, using, selling, offering to sell, and importing into the United States, without authority, the Accused System.

42. For example, as illustrated in the Axalta video entitled "Special Colours Tinted Clear Coat Repair Process,"[1] Axalta uses the individual products branded as Cromax, *i.e.*, Chromasystem products, to refinish an automobile by using those individual products to form a multi-layered system as recited in at least claim 1 of the '505 Patent. Upon information and belief, Axalta used a metallic basecoat layer (basecoat), a color-imparting non-hiding layer (midcoat) deposited over at least a portion of the basecoat layer, and a clearcoat layer deposited over at least a portion of the color-imparting non-hiding layer or midcoat layer, as recited in at least claim 1 of the '505 Patent. As further evidence of utilizing the individual products in an Accused System, *see* Exh. 31, a true

[1] "Special Colours Tinted Clear Coat Repair Process" dated Jan. 14, 2021 available at https://www.youtube.com/watch?v=8pEp8KickVk

and correct copy of Axalta's Cromax Technical Data Sheet, *Tri-Coat Repair Procedure*. This data sheet describes using Axalta's ChromaSystem individual products in a manner that infringes the '505 Patent. Axalta describes a similar repair process in connection with its Spies Hecker and Sandox brands. *See e.g.,* Exh. 32, a true and correct copy of Axalta's Technical Data Sheet, *Permahyd® Hi-Tec 3-Stage Transparent Color Refinish Process*; see also, Exh. 33, a true and correct copy of Axalta's Technical Data Sheet, *Standocryl® Speciality Midcoats*. Axalta also describes repairs using Cromax Tinted Clearcoat Additives that involve applying basecoats, tinted clearcoats, and clearcoats to form a multi-layered system as recited in at least claim 1 of the '505 Patent. *See* Exh. 34 Axalta's Technical Brochure, *Cromax Tinted Clearcoat Additives*.

43. Axalta has training centers throughout the United States including in Illinois, North Carolina, California, Florida, Texas, and Pennsylvania. *See* Exh. 35, a true and correct copy of Axalta's website showing training centers (https://www.axalta.com/us/en_US/products-and-customers/training/training-centers.html). Axalta's training centers provide instruction for and demonstration and use of multi-coat applications of Axalta's Cromax, Spies Hecker and Standox brands in a manner that infringes one or more claims of the '505 Patent.

44. Upon information and belief, Axalta also makes, uses, sells, offers to sell and/or imports into the United States the Accused System in a manner that infringes one or more claims of the '505 Patent through various activities including quality control, testing, product development, determining conditions and procedures for use, assessing durability, transparency, and/or opacity of resulting coatings, and assessing color effects of the resulting coatings.

45. Axalta's direct infringement was willful because they had actual knowledge of, or alternatively, were willfully blind to, the '505 Patent.

Knowledge of the '505 Patent.

46. Plaintiffs reference and incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

47. Defendant Axalta has had actual knowledge of or, alternatively, was willfully blind to the '505 Patent since at least March 20, 2013, when Defendant, while still doing business under the name "DuPont Performance Coatings," opposed PPG's EP '195 Patent[2] *See* Exh. 36, a true and correct copy of English translation of the Opposition to the EP '195 Patent.

48. Upon information and belief, Defendant was making intellectual property decisions related to its performance coatings business, and nearly two months after fully acquiring DuPont's business, it filed the Opposition to PPG's EP '195 Patent. For example, the shell company Axalta Coating Systems IP Co. LLC[3] has the same Vice President and Treasurer as Defendant, an operating company. *See* Exh. 37 at 9, a true and correct copy of a Supplemental Indenture Agreement, which shows Karyn Rodriguez signing as the Vice President and Treasurer of both Defendant Axalta Coating Systems LLC and *see* Exh. 38, a true and correct copy of a patent assignment, showing Karyn Rodriquez signing as Vice President and Treasurer of Axalta Coating Systems IP Co. LLC. at Reel 045921, Frame 0908.

49. The opposed EP '195 Patent is the foreign counterpart to the '505 Patent.

50. The EP '195 Patent claims priority to the U.S. Patent Application (10/876,291) that issued as the '505 Patent.

[2] When the Opposition was filed on March 20, 2013, Defendant's subsidiary, Axalta Coating Systems Germany GmbH, who later became the opponent, had not yet been formed. *See* Exh. 13 Axalta Coating Systems Germany GmbH was formed on April 22, 2013. *Id.*

51. The cover page of the EP '195 Patent specifically cites to the U.S. Patent Application that was granted as the '505 Patent, and this U.S. Patent Application was part of the prosecution file history of the EP '195 Patent, at the EPO since its submission on February 20, 2006. As a global company, before initiating the Opposition, Axalta would have reviewed the prosecution file history of the EP '195 Patent and would have found the U.S. Patent Application that issued as the '505 Patent.

52. The EP '195 Patent identifies and claims priority to the '505 Patent. Both patents have the same title "Coated Articles and Multi-Layer Coatings" and identical inventorship. EP '195 Patent was granted in June 2012 with claims substantially similar to those granted in the '505 Patent. Both patents have claims directed to a novel multi-layer coating system. A comparison of the claims issued in the '505 Patent and the EP '195 Patent is shown below:

US '505 Patent	**EP '195 Patent**
A multi-layer coating system comprising	A multi-layer coating system comprising:
a) a metallic basecoat layer deposited from a film-forming composition comprising a resinous binder and a metallic pigment	a) a basecoat layer deposited from a film-forming composition comprising a resinous binder and a metallic pigment;
b) a color-imparting non-hiding coating layer deposited over at least a portion of the basecoat layer, wherein the color-imparting non-hiding layer is deposited from a protective coating composition comprising	b) a color-imparting non-hiding coating layer deposited over at least a portion of the basecoat layer, wherein the color-imparting non-hiding layer is deposited from a protective coating composition comprising
(i) color-imparting organic pigments of one or more colors having an average primary particle size of less than 150 nanometers and having a maximum haze of about 10%; and (ii) a film-forming resin	(i) color-imparting particles having a maximum haze of about 10%; and (ii) a film-forming resin; and,
c) a clearcoat layer deposited over at least a portion of the color-imparting non-hiding layer, wherein the clearcoat layer is deposited from a film-forming composition comprising a resinous binder, wherein one or more of the layers a), b) and c) is capable of ambient cure	a clearcoat layer deposited over at least a portion of the color-imparting non-hiding layer, , wherein the clearcoat layer is deposited from a film-forming composition comprising a resinous binder.

53. Upon information and belief, a multi-layer system that infringes the '505 Patent in the United States, would also infringe the EP '195 Patent in Europe.

54. Upon information and belief, as of Axalta's acquisition in 2013, it "serves more than 120,000 customers in 130 countries and provides customers with a full range of coating systems." *See* Exh. 7 at 2. Axalta is a sophisticated global company in a market with only a handful of primary direct competitors. In its 2014 Form S-1 Registration Statement, Axalta identifies three direct competitors in the performance coatings market: PPG, BASF and Akzo Nobel. *See* Exh. 16, at 115

55. Axalta is also sophisticated with respect to intellectual property, specifically patent matters worldwide, with the United States being a major market for Axalta's products. The cover of EP '195 discloses the U.S. application granted as the '505 Patent as its priority document. This identification provided Axalta with access to the US priority application itself and to its prosecution history, including the granted '505 Patent, which was freely available to Axalta through the public records of the United States Patent & Trademark Office.

56. During the Opposition, Axalta raised a different PPG-owned U.S. patent publication, i.e., US 2003/0125417 entitled Use of Nanoparticulate Organic Pigments in Paints and Coatings, underscoring that Axalta was well aware of PPG's portfolio of patents and published applications.

57. These aforementioned facts make it more than plausible to conclude that Defendant had actual knowledge of the '505 Patent in March 2013, when it initiated the Opposition.

58. Alternatively, Defendant was willfully blind to the '505 Patent by deliberately ignoring the identification of the US application resulting in the '505 Patent on the cover of the EP '195 Patent.

59. PPG is a global company and Axalta recognized that it competed with PPG on a global scale. *See* Exh. 16, at 120 (identifying PPG as a primary multi-national competitor to Axalta).

Axalta, being a global company itself, upon information and belief would have subjectively believed that there was a high probability that a US company such as PPG would have a US counterpart to the very patent it opposed in Europe. If, despite the evidence before it, Axalta deliberately avoided learning of the '505 Patent, Axalta is a willfully blind defendant.

60. Alternatively, as of service of the initial complaint in this action on March 5, 2021, Axalta has had knowledge of the '505 Patent. Furthermore, PPG sent a letter to Defendant on March 8, 2021 identifying the '505 Patent and Axalta's infringement.

Induced Infringement.

61. Plaintiffs reference and incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

62. Axalta actively, knowingly, and intentionally has been and continues to induce infringement of the '505 Patent under 35 U.SC. § 271(b).

63. Axalta Customers at the direction of Axalta use the individual products in regular business operations to make the Accused System. Axalta actively encourages Axalta Customers to use the individual products to make, use, sell, offer to sell, and/or import into the United States the Accused System, via Axalta sales or technical personnel stationed at OEM plants, training courses, technical data sheets, instructions for use, and marketing materials.

64. For example, Axalta's Vermeera™ high chroma color technology is sold and offered for sale to OEMs, who use Vermeera™ technology in a "multi-layer process to achieve both an intense [] color and a unique sparkle effect." *See e.g.,* Exh 39, a true and correct copy of Axalta Press Release, *Color of the Year 2016 – Brilliant Blue*, (January 7, 2016), https://www.axalta.com/corporate/en_US/about-axalta/color/color-of-the-year-2016.html (last accessed Feb. 6, 2020); *see also*, Exh. 49, Axalta's Web Page, *Color of the Year 2015—Radiant*

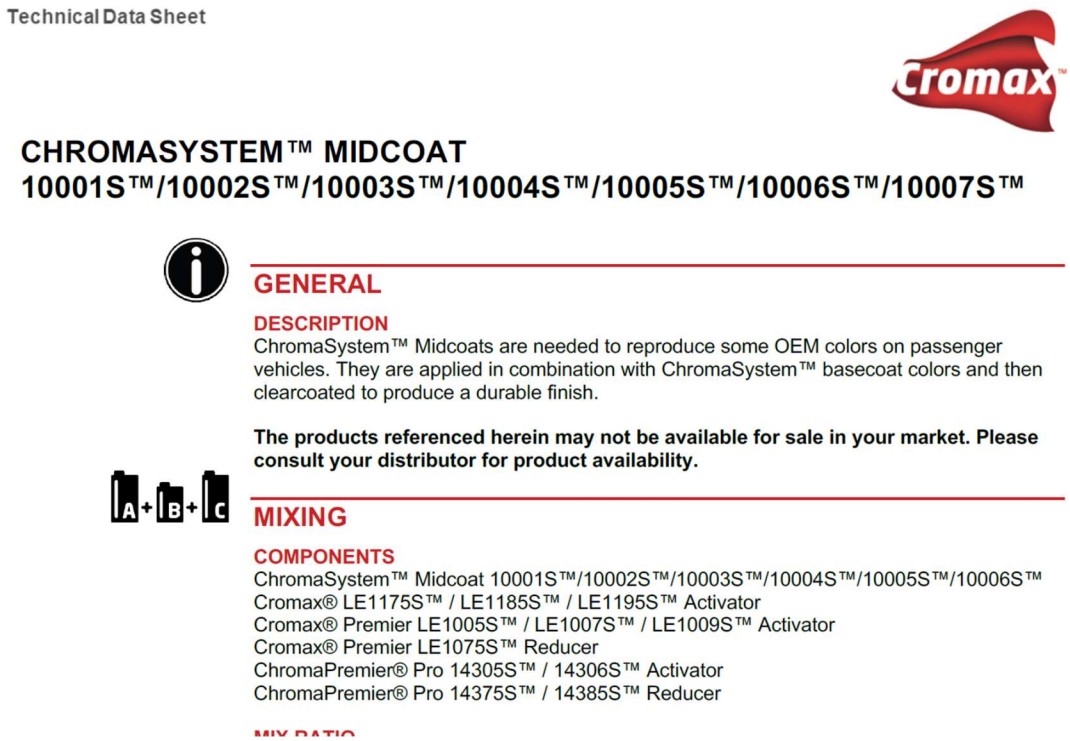
Red, https://www.axalta.com/corporate/en_US/about-axalta/color/color-of-the-year-2015.html (last accessed on Feb. 6, 2021) (stating "[Radiant Red] also contains Axalta's Vermeera™ high chroma technology and a sparkle effect."). This "unique sparkle effect" is achieved by use of a nanoparticulate pigment dispersions having low haze as the midcoat layer in a multi-layer coating system.

65. Axalta Customers directly infringe and continue to directly infringe the '505 Patent, by among other things, by making, using, offering for sale, selling, and or importing into the United States, the Accused System formed from Axalta's individual products. Axalta Customers are actively induced to use the individual products in a manner that infringes the '505 Patent by Axalta's active encouragement, direction, and instruction.

66. Axalta's affirmative acts have induced and continue to induce Axalta Customers to use the individual products in a manner that infringes at least Claim 1 of the '505 Patent. Axalta knows that that when the individual products are used in the manner directed by Axalta, Axalta Customers directly infringe at least Claim 1 of the '505 Patent.

67. Axalta actively and knowingly induces, directs, causes and encourages refinishers and OEMs to infringe at least Claim 1 of the '505 Patent, all with knowledge or willful blindness of the '505 Patent and with knowledge or willful blindness to the fact that induced acts infringe one or more claims of the '505 Patent.

68. For example, Axalta actively directs Axalta Customers to deposit the midcoat over the basecoat, followed by depositing a clearcoat on the midcoat. *See* Exh. 40, a true and correct copy of Axalta's Cromax Technical Data Sheet, *Chromasystem™ Midcoat*, at https://www.axalta.com/cromax_us/en_US/products/technical-center.html, (last accessed February 6, 2021), a portion of which is reproduced below.



Technical Data Sheet

Cromax

CHROMASYSTEM™ MIDCOAT
10001S™/10002S™/10003S™/10004S™/10005S™/10006S™/10007S™

GENERAL

DESCRIPTION

ChromaSystem™ Midcoats are needed to reproduce some OEM colors on passenger vehicles. They are applied in combination with ChromaSystem™ basecoat colors and then clearcoated to produce a durable finish.

The products referenced herein may not be available for sale in your market. Please consult your distributor for product availability.

MIXING

COMPONENTS

ChromaSystem™ Midcoat 10001S™/10002S™/10003S™/10004S™/10005S™/10006S™
Cromax® LE1175S™ / LE1185S™ / LE1195S™ Activator
Cromax® Premier LE1005S™ / LE1007S™ / LE1009S™ Activator
Cromax® Premier LE1075S™ Reducer
ChromaPremier® Pro 14305S™ / 14306S™ Activator
ChromaPremier® Pro 14375S™ / 14385S™ Reducer

69. As shown in the datasheet, the description instructs that "ChromaSystem™ Midcoats are needed to reproduce some OEM colors" and that "[t]hey are applied in combination with ChromaSystem basecoat colors and then clearcoated to produce a durable finish."

70. Axalta's basecoat is "a metallic basecoat layer deposited from a film-forming composition comprising a resinous binder and a metallic pigment." *See* Exh 25, '505 Patent, claim 1 (a). For example, Axalta describes that its basecoat's physical properties include "dry film thicknesses" indicating that the basecoat is deposited from a film-forming composition. *See* Exh. 41 at 7, which a true and correct copy of Axalta's Cromax® Technical Data Sheet, Cromax® *Pro Basecoat,* accessible on Axalta's website at https://www.axalta.com/cromax_us/en_US/products/technical-center.html (last accessed Feb. 6, 2021). Axalta states that its basecoat is applied as "an even paint film" and mixing components include one or more binders and activator indicating the film forming composition comprises a resinous binder. *See* Exhibit 41 at 3.

71. Axalta's basecoat also includes metallic pigment. *See, e.g. id.* at 7 (physical properties includes metallics); *id.* at 1 (describing basecoat as "solid, ***metallic*** and pearl colors" in "description"); *See* Exh. 42, which a true and correct copy of Axalta's website page, https://www.axalta.com/ca/en_CA/products-services/liquid-coatings/cromax/products/basecoat-offerings/cromax-pro.html (last accessed January 25, 2021) (describing basecoat as "[s]olid, ***metallic*** and pearl colors").

72. Thus, Axalta's basecoat is a metallic basecoat layer comprising metallic pigment meeting the basecoat element of the '505 Patent.

73. Axalta actively directs and instructs Axalta Customers via the ChromaSystem™ Midcoat Technical Data Sheet (Exh. 41) to use any one of several identified basecoats, *i.e.*, "CromaSystem™ basecoat colors". *Id*. at 1. On information and belief, one or more of these basecoats, likewise, comprise metallic flakes thereby causing a metallic basecoat layer to comprise metallic pigment. Thus, based on Axalta's own statements, the individual products include a metallic basecoat layer deposited from a film-forming composition comprising a resinous binder and a metallic pigment.

74. Axalta's midcoat is a "color imparting non-hiding coating layer. . . deposited from a protective coating composition comprising (i) color-imparting organic pigments of one or more colors having an average primary particle size of less than 150 nanometer and having a maximum haze of about 10%; and (ii) a film forming resin." *See* Exh. 25, '505 Patent, claim 1 (b).

75. Axalta's ChromaSystem™ Midcoat Technical Data Sheet (Exh. 40 at 1) discloses that the midcoat layer is "needed to reproduce some . . . colors on passenger vehicles." Thus, upon information and belief, the midcoat layer is color-imparting and non-hiding. For example, at least

the Axalta' Cromax ChromaSystem™ Midcoat 10002S Clean Maroon is a non-hiding coating layer because the surface beneath the layer is visible.

76. The midcoat layer is deposited from a protective coating composition comprising a "film forming resin." The Cromax ChromaSystem™ Midcoat Technical Data Sheet also describes the midcoat as having a "dry film thickness" and produces a "durable finish." *See* Exh. 41 at 3, 1. Thus, upon information and belief, the protective coating comprises a film forming resin, as claimed.

77. Upon information and belief, the midcoat layer includes color imparting organic pigments of one or more colors with an average primary particle size of less than 150 nanometers and having a maximum haze of about 10%. Axalta's Cromax ChromaSystem™ Midcoat Technical Data Sheet (Exh. 5 at 1) discloses that the midcoat layer is "needed to reproduce some . . . colors on passenger vehicles." Upon information and belief, the color in the midcoat is produced by color imparting organic pigments of one or more colors with an average particle size of less than 150 nanometers and having a maximum haze of about 10%.

78. Axalta's clearcoat layer is deposited from a film-forming layer comprising a resinous binder. *See* Exh. 25, the '505 Patent, claim 1 (c). Axalta directs Axalta Customers to use Cromax Premier LE 8300S clearcoat with the Cromax Pro basecoat in a multi-layer system. *See* Exh. 43 at 1, 3 (Cromax Pro Basecoat webpage listing Cromax Premier LE 8300S clearcoat as a recommended system offering).

79. Axalta's Technical Data Sheet for this LE8300S clearcoat, likewise, instructs Axalta Customers to apply the clearcoat in a multi-layer system with both Axalta's basecoat and midcoat. *See*, Exh. 44, which a true and correct copy of Axalta's Technical Data Sheet for LE8300S Clearcoat, (describing substrates including Cromax® Pro Basecoat and ChromaSystem™

Midcoat). Upon information and belief, the ingredients in LE8300S include 30-60% acrylic polymer and 10-30% acrylic resin, indicating that the clearcoat comprises a resinous binder. *See,* Exh. 45, which a true and correct copy of Axalta Material Safety Data Sheet for LE8300S (describing acrylic polymer and acrylic resin as ingredients).

80. Axalta directs Axalta Customers to add an activator to the clearcoat, such as Cromax Premier LE 1005S Activator. *See,* Exh. 44 (describing activators as mixing components). Upon information and belief, the LE1005S Activator includes diisocyanate oligomers, which are believed to crosslink the polymers present in the clearcoat to form a resinous binder. *See*, Exh. 45 at 2, which a true and correct copy of Axalta's Safety Data Sheet for LE1005S Chromasystem Activator (ingredients including hexamethylene diisocyanate, oligomers and 3-Isocyanatomethyl-3, 5, 5-triethylcyclohexyl isocyanate, oligomers).

81. At least one layer of the multi-layer system directed by Axalta, *i.e*., basecoat, midcoat, and clearcoat, is capable of ambient cure. For example, Axalta teaches that the LE8300S clearcoat (which is instructed to be mixed with an activator) is capable of "air dry," suggesting ambient temperatures can be used. *See, e.g.*, Exh. 43 at 2. Thus, upon information and belief, at least the clearcoat layer is capable of ambient cure.

82. Axalta intended to induce patent infringement of the '505 Patent by Axalta Customers and had knowledge that the inducing acts would cause infringement or was willfully blind to the possibility that its inducing acts would cause infringement. Axalta specifically intended and was aware that the normal and customary use of the individual products, as actively directed, instructed, and encouraged by Axalta, would infringe the '505 Patent. Axalta performed the acts that constitute induced infringement, induced actual infringement by Axalta Customers, with

knowledge or willful blindness of the '505 Patent, and with the knowledge or willful blindness that the induced acts would constitute infringement.

83. Axalta provides the individual products that, when used together as instructed by Axalta, operate in a manner that infringes one or more claims of the '505 Patent, including claim 1. Axalta further provides documentation, *i.e.*, technical data sheets and training materials, as well as live training sessions and technical personnel at plants of OEMs, that induce Axalta Customers to use those individual products in a manner that directly infringes one or more claims of the '505 Patent. By providing these instructions, technical assistance and training to Axalta Customers on using the individual products in a manner that infringes the '505 Patent, Axalta specifically intended to induce infringement of the '505 Patent. Upon information and belief, Axalta engaged in such inducement to promote the sales of its individual products, *e.g.*, through Axalta product support documentation, marketing materials, and training materials, to actively induce the Axalta Customers to infringe the '505 Patent. Accordingly, Axalta has induced and continues to induce its Axalta Customers to infringe the '505 Patent, knowing that such use constitutes infringement of the '505 Patent.

Contributory Infringement.

84. Plaintiffs reference and incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein

85. Axalta actively, knowingly, and intentionally has been and continues to contribute to infringement of the '505 Patent within the meaning of 35 U.S.C. § 271(c), by selling, offering to sell within the United States and/or importing into the United States, individual products—midcoats, tints for midcoat, and tinted clearcoats, that are components of the multi-layer coating system claimed by the '505 Patent. These Axalta individual products constitute a material part of

the inventions claimed in the '505 Patent. The individual products, designed to incorporate nanotechnology and high transparency (low haze), are responsible for greater color saturation enhanced by a unique sparkle effect and other special effects to achieve a luxurious color, to meet the continual demand to expand the color palette.

86. Axalta knew its individual products are especially made or especially adapted for use in a multi-layer coating system that infringes the '505 Patent, and the midcoat individual product is not a staple article or commodity of commerce suitable for substantial non-infringing use. The midcoat individual product sold by Axalta is especially designed for use in a multilayer system as claimed in the '505 Patent to achieve a durable automobile coating that exhibits deep color effects not achieved by other multilayer systems. Any uses other than in the claimed multi-layered system are insubstantial and theoretical.

87. PPG's ANDARO® technology and the '505 Patent are well-known in the automotive industry as demonstrated by the Automotive News PACE Award in 2013. *See* Exh. 46 Axalta is utilizing the technology claimed in the '505 Patent without compensating PPG for such use. Axalta is indirectly infringing the '505 patent in a manner best described as willful, wanton, malicious, in bad faith, deliberate, consciously wrongful, or flagrant.

88. As a result of Axalta's infringement of the '505 Patent, PPG has been harmed, PPG suffered monetary damages, and seeks recovery in an amount adequate to compensate for Axalta's infringement, but in no event less than a reasonable royalty for the use made of the invention by Axalta together with interest and costs as fixed by the Court. PPG also seeks injunctive relief to remedy the irreparable harm PPG has suffered due to Axalta's infringement of the '505 Patent.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a trial by jury on all issues in this case that properly are subject to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor against Axalta granting Plaintiffs the following relief:

A. Entry of judgment that Axalta has infringed and infringes, directly and/or indirectly, the Patent-in-Suit;

B. Entry of judgment that Axalta's infringement of the Patent-in-Suit has been willful;

C. An order permanently enjoining Axalta, together with its officers, agents, servants, employees, customers, and all those persons acting or attempting to act in active concert or in participation with it or acting on its behalf, from infringing the Patent-in-Suit;

D. An award of compensatory damages adequate to compensate Plaintiffs for Axalta's infringement of the Patent-in-Suit, but in no event less than a reasonable royalty for the use made of the invention by Axalta and its Axalta Customers, all those persons acting or attempting to act in active concert or in participation with it or acting on its behalf, together with interest and costs as fixed by the Court and trebled for willful infringement provided by 35 U.S.C. § 284;

E. Plaintiffs' reasonable fees for expert witnesses and attorneys, as provided by 35 U.S.C. § 285, as well as Plaintiffs' costs;

F. Pre-judgment and post-judgment interest on Plaintiffs' award; and

G. All such other and further relief as the Court deems just or equitable.

Dated: February 18, 2022

Respectfully submitted,

REED SMITH LLP

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